

40740



RECEIVED

SEP 05 2002

PATENT
TECH CENTER 1600/2900

15

JM

9/4/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: :
Gabrielle MULTHOFF : Group Art Unit: 1642
Serial No.: 09/646,835 : Examiner: K. Canella
Filed: 11 January 2001 :
For: USE OF HSP70 PROTEINS :
: :
:

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

This Response is in reply to the Restriction Requirement mailed 05 August 2002. As such, the filing on 04 September 2002 represents a timely filing, thus, no additional fees should be applied.

I. Election

The Examiner identified 3 species as follows:

- a. cancerous diseases;
- b. autoimmune diseases; and
- c. infectious diseases.

Further, the Examiner asserts that the claims corresponding to the enumerated species can be delimited as follows:

Species (a) and (c): claims 31-41 and 54.

Species (a), (b) and (c): claims 42-49 and 55-60.

Finally, claims 31-47 and 50-60 were asserted to be generic.

BEST AVAILABLE COPY

RESPONSE TO RESTRICTION REQUIREMENT

U.S. Serial No.: 09/646,835

Applicant elects, with traverse, species (a); i.e., examination of all claims, 31-60, directed to cancerous diseases.

When found patentable, the Examiner will be obligated to examine the remaining two species. The Examiner asserts that the "application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1."

Annex B, of the Administrative Instruction Under the PCT, Unity of Invention, Part I, Instruction Concerning Unity of Invention, (b), states in part:

"The expression 'special technical features' is defined in Rule 13.2 as meaning those technical features that define a contribution which each of the inventions, considered as a whole, makes over the prior art."

For the instant invention, the special technical features that contributes over the prior art comprises the activation of NK cells by Hsp70 or fragments thereof, or derivatives thereof. Further, examination of the reasons offered in the Office Action demonstrates that all of the diseases require modulation of an immune response by activated NK cells via said protein or fragments. Moreover, review of all independent claims demonstrates that said activation/modulation links the invention as a whole. As such, the activation of NK cells to modulate immune response so links the claims as to form a single general concept.

For these reasons, Applicant respectfully requests that the holding of Lack of Unity be withdrawn.

RESPONSE TO RESTRICTION REQUIREMENT

U.S. Serial No.: 09/646,835

CONCLUSION

The Examiner is respectfully requested to reconsider her position, collapse the existing Species Requirement and redefine the groups in a fashion wherein the complete scope of the invention as claimed is examined.

Favorable consideration and early indication of allowance are solicited earnestly. The Commissioner hereby is authorized to charge payment of any fees under 37 C.F.R. § 1.17 that may become due in connection with the instant application or credit any overpayment to Deposit Account No. 18-2220.

Respectfully submitted,


Daryl A. Basham
Reg. No. 45,869

Roylance, Abrams, Berdo
& Goodman, L.L.P.
1300 19th Street, N.W., Suite 600
Washington, D.C. 20036-2680
(202) 659-9076

Dated: 04 September 2002